

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICKEY A. BEAVER,
Plaintiff,
v.
RICK PALMERTON,
Defendant.

Case No. C06-5215RJB

REPORT AND
RECOMMENDATION TO
DISMISS COMPLAINT
WITHOUT PREJUDICE

NOTED FOR:
June 23rd 2006

This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the court upon plaintiff's request/motion to voluntarily dismiss his complaint, (Dkt. # 7). The court entered an order to show cause why the action should not be dismissed and in response plaintiff filed a document requesting the court grant his motion to dismiss. (Dkt. # 7). After reviewing plaintiff's motion, and the remaining record, the Court recommends the action be

DISMISSED WITHOUT PREJUDICE.

DISCUSSION

Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992). When ruling on a motion to dismiss without prejudice,

1 the district court must determine whether the defendant will suffer some plain legal prejudice as a result of the
2 dismissal. Hyde & Drath v. Baker, 24 F.3d 1162, 1169 (9th Cir.1994); Hamilton v. Firestone Tire & Rubber
3 Co., 679 F.2d 143, 145 (9th Cir.1982).

4 Here, the complaint has not been served. Thus, plaintiff has a right to dismiss the action.

5 CONCLUSION

6 Accordingly, plaintiff's request to voluntarily dismiss his complaint (Dkt. # 7) should be **GRANTED**.
7 A proposed order accompanies this report and recommendation.

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9 Dated this 31st day of May, 2006.

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11 /S/ J. Kelley Arnold
12 J. Kelley Arnold
United States Magistrate Judge

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